

Review of state-based authorisation processes for use of restrictive interventions: A consultation for the Government of Tasmania

Summary Report

February 2022

Acknowledgement

The Department of Communities Tasmania extends our sincere thanks to the people with lived experience for sharing their views and experience of Tasmania's authorisation of the restrictive practice pathway.

Communities Tasmania also extends our thanks and acknowledges the participation of other key stakeholders across community and government who contributed to the consultation.



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Executive Summary

The Department of Communities Tasmania (Communities Tasmania) engaged JFA Purple Orange to undertake an independent analysis of Tasmania's authorisation processes for the use of restrictive practices across the funded disability sector, including the role of the Senior Practitioner. JFA Purple Orange provided the *Review of state-based authorisation processes for use of restrictive interventions: A consultation for the Government of Tasmania* (Report) to Communities Tasmania in August 2021.

JFA Purple Orange is a non-government, social profit organisation based in South Australia. JFA Purple Orange was tasked with providing advice to Communities Tasmania to inform the development of a best practice authorisation system that aligns with the draft Principles for Nationally Consistent Authorisation of Restrictive Practices and incorporates national requirements and definitions.

The work undertaken by JFA Purple Orange is an integral and complementary activity that will contribute to the review of the Tasmanian *Disability Services Act 2011* (the Act) and assist in shaping Tasmania's future restrictive practice environment.

The Act provides the legislative basis for the authorisation of restrictive practices, which are referred to in the Act as restrictive interventions.

Since the Act was operationalised in 2012 there has been significant change in the delivery of specialist disability services. The *National Disability Insurance Scheme Act 2013* has been legislated and the National Disability Insurance Scheme (NDIS) has been fully operational in Tasmania since 1 July 2019.

Under the NDIS states and territories retained responsibility for legislative and policy frameworks that authorise the use of restrictive practices. The NDIS Quality and Safeguards Commission (NDIS Commission) has the statutory function of oversight and regulation of the use of behaviour supports in the NDIS including the planning for those supports as part of a positive behaviour support strategy and oversight of the implementation of restrictive practices in the NDIS.

The Act has two different authorisation pathways depending on whether the restrictive practice is personal or environmental. The Tasmanian Civil and Administrative Tribunal (TASCAT) – Guardianship Stream (formerly the Guardianship and Administration Board) authorises personal restrictive practices whereas environmental restrictive practices are authorised by either the Secretary Communities Tasmania's or TASCAT. There is currently no authorisation required for the use of chemical restraint within the Act.

The absence of a state authorising environment for the use of chemical restraint is a notable variance from the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018* and is a significant contributing factor regarding the number of unauthorised restrictive practices reported to the NDIS Commission by NDIS providers delivering support and services in Tasmania.

This document is a summary report prepared by Communities Tasmania. The Summary Report contains the findings and recommendations made by JFA Purple Orange and does not contain any content that may identify feedback or contributions from individual participants.



Goals

JFA Purple Orange was engaged to:

- Actively seek and understand the views of people with disability, their families, providers, people with lived experience and other stakeholders regarding what a future Tasmanian restrictive practice authorisation system could include and look like.
- Inform development of a ‘best practice’ authorisation system that in consideration of existing authorisation arrangements across Australia aligns with the Principles for Nationally Consistent Authorisation of Restrictive Practices and incorporates national requirements and the NDIS regulated restrictive practice definitions.
- Articulate the elements of an efficient restrictive practice authorisation model, including the future role of the Senior Practitioner, that is appropriate and sustainable within the Tasmanian context whilst upholding the rights and protections of people with disability.

Methodology

JFA Purple Orange engaged with key stakeholders through the following processes:

- people with disability, their family and carers, provider, advocacy and government representatives were provided with the opportunity to participate in a direct and individual conversation; and
- all 32 NDIS providers offering supported independent living (SIL) supports in Tasmania were invited to contribute through an on-line survey.

JFA Purple Orange also undertook a jurisdictional scan of authorising environments across Australian States and Territories.

Over 70 people contributed to the analysis via phone, online consultations and survey; the following is an overview of respondents:

- Individual conversations with JFA Purple Orange = 32
 - *People with disability, their family and carers* = 18
 - *Provider and Government stakeholders* = 14
- Written submission from provider/government stakeholder = 1
- SIL Provider survey responses - 44¹

In addition, JFA Purple Orange established a co-design group that

1. Contributed to the consultation methodology and
2. Assisted with analysis from the consultation process.

¹ Some SIL providers were represented by more than one respondent

The co-design group included people living with disability in South Australia who have experienced the use of restrictive practices together with disability service provider representatives who have an interest in policy reform in this area.

Stakeholder Feedback

The following is a broad and de-identified summary of the key feedback

- All stakeholders identified the deficit of behaviour support specialists in Tasmania.
- Direct quotes and feedback from stakeholders about their experiences and perceptions when interacting with the Office of the Senior Practitioner and the former Guardianship and Administration Board articulated both positive and less favourable views.
- Many families felt they were not appropriately included and communication of information from providers was lacking. Families also voiced concern that providers are not appropriately accountable to them or to people living with disability.
- The role of the Senior Practitioner in the authorisation process was not consistently or accurately understood.
- One to one consultations, educational resources and information provided via email and education and training sessions were all considered useful, however some respondents noted confusion due to differences between the state system and NDIS Commission.
- SIL provider respondents identified:
 - a range of benefits resulting from the authorisation system such as, but not limited to, safety, oversight and transparency, provision of support to providers, protecting the rights of people with disability.
 - managing chemical restraint as a key issue, with requirements being ambiguous and staff not being supported to deal with this type of restraint, particularly as doctors are the primary decision maker.
 - increased financial support, improving sector knowledge of positive behaviour support and offering more support and incentives would assist in reducing the use of restrictive practices.
- Plain English language should be used in communication rather than being legalistic and overly formal particularly as those who are in unpaid caring roles are often time poor

Jurisdictional Scan

The scan of Australian states and territories authorising environment identified

- An evolving and changeable environment, responding to the commencement of the NDIS and operations of the NDIS Quality and Safeguards Commission.



- Most jurisdictions had or were undertaking reviews and reforms of their restrictive practice arrangements. With most having legislated provisions to guide the use of restrictive practices.
- Tasmania is one of two jurisdictions where behaviour support plans are not formally part of the authorisation process for the use of restrictive practices.
- Consent of the person with disability is not required in most jurisdictions, rather consultation occurs but may not occur until the development of the behaviour support plan rather than during the authorisation process.
- With the exception of Tasmania where authorisation of restrictive practices can be for a period of two years, most authorisations are generally for a 12-month period.

Findings

The following provides an overview of the key findings from the independent analysis of Tasmania's restrictive practice pathways.

The dual pathways are difficult to navigate for some stakeholders and the differences across these pathways contribute to the complexity of the existing authorisation environment for stakeholders, such as duration of approvals. Furthermore, the inconsistency between state and national definitions and requirements results in confusion for providers and people with disability and increased regulatory burden to meet the reporting obligations required of providers.

The authorisation of environmental restrictions by Communities Tasmania's Secretary is viewed by some to be an administrative process where the decision is made by one individual who is reliant on the information provided. However, this pathway, does in fact, enable input from multiple people.

Any future pathway must be considered from a human rights perspective and needs to be accessible, transparent and easily navigated by people living with disability and their families, providing the opportunity for readily available support and guidance along the pathway.

The current authorisation process is negatively impacted by rigid and inflexible rules for people with disability who have complex needs, the absence of a portal-type system, timeframes from application to outcomes, capacity for the NDIS behaviour support practitioner market to respond to demand, unclear lines of accountability and behaviour support plans not being used within the process.

In addition to addressing the factors that currently impact the authorisation process, implementing refresher and more comprehensive training (including cultural training needs), greater oversight and monitoring and increased capacity to enable the Senior Practitioner to support and advise the sector were strategies identified to improve the process.

A general perception emerged that for some people living with disability restrictive practices are not likely to ever be effectively reduced or eliminated. Some stakeholders noted the reduction and elimination of restrictive practices could result in an unsafe workplace and become a deterrent in the attraction and retention of an appropriately skilled workforce. However, stakeholders expressed a willingness to enter into discussions about how restrictive practices could be reduced.

Recommendations

JFA Purple Orange's Report includes the following 12 recommendations.

Recommendation 1

That the Tasmanian Government changes the current dual authorisation pathways to a single authorisation pathway removing the function of the Guardianship and Administration Board from the authorisation pathway.

Recommendation 2

That the Tasmanian Government reviews the sequence of steps currently involved in seeking approvals for restrictive interventions and considers a linear pathway where the participant is supported at each step via a behaviour support plan leading to a reduced need for restrictive practices.

Recommendation 3

That the Tasmanian Government reviews the role, positioning and current reporting structure of the Senior Practitioner and considers elevating this role to bring it into alignment with other jurisdictions that can be considered to use best practice designs.

Recommendation 4

That the Tasmanian Government considers widening the current legislation under which the Senior Practitioner can operate in order to allow for greater consistency and oversight of restrictive practices across other appropriate settings such as educational, child protection, thereby ensuring a coordinated approach for participants accessing multiple services.

Recommendation 5

That the Tasmanian Government positions the Office of the Senior Practitioner as a leader for sector-wide education and capacity building towards a positive context for how people are supported, particularly people most at risk of a service provider using restrictive practices in their support arrangements.

Recommendation 6

That the OSP [Office of the Senior Practitioner] role and resourcing include capacity to directly provide specialist input to agencies in relation to alternatives to restrictive practices through positive behaviour support strategies, and to develop other best practice resources that assist service agencies to build capacity.



Recommendation 7

That the Tasmanian Government commit to supporting the OSP to lead a human rights approach to the broader context surrounding a restrictive practices authorisation pathway, including an emphasis on authentic, strengths-based, vision-based approaches to planning that place the person's vulnerability in the context of building life chances leading to a reduced need for restrictive practices.

Recommendation 8

That the Tasmanian Government change the current definition of restrictive interventions and in doing so refer to the national definition of restrictive practices. We also recommend that as part of this change chemical restraint is included as a category of restrictive practices requiring approval.

Recommendation 9

That the Tasmanian Government require an NDIS Interim Behaviour Support Plan for an interim authorisation period of no longer than six months or an NDIS Behaviour Support Plan, including a complete Functional Behavioural Assessment, for an authorisation period of no longer than 12 months. That there be no authorisations of any duration without a plan; deferring instead to a strict emergency arrangement.

Recommendation 10

That the Tasmanian Government implements supported decision making frameworks within its restrictive practices authorisation processes and lead a national conversation relating to this approach.

Recommendation 11

That the Tasmanian Government implements a mechanism within the authorisation pathway that provides people living with disability and their families clear access to authentic, independent review processes, separate from original decision-makers.

Recommendation 12

That the Tasmanian Government continues to explore ways to establish a data capture and reporting mechanism for the conduct of restrictive practices, and that this database is curated by the OSP.

Model Proposed

In consideration of the Recommendations, particularly recommendations 1, 2 and 3, JFA Purple Orange proposed a single, linear pathway model for the authorisation of restrictive practices that, in their view, could be considered within the Tasmanian context.

The proposed model is premised on the Office of the Senior Practitioner undertaking the following key functions:

- **Regulate:** regulating the circumstances in which restrictive practices may be undertaken as part of a person's supports
- **Adjudicate:** investigating complaints and concerns, and determining if a practice should be discounted and replaced by more positive alternatives
- **Facilitate:** leading and facilitating the growth in capacity of Tasmania human services sector to reduce and eliminate restrictive practices in favour of positive alternatives.

JFA Purple Orange articulated the following seven steps in the pathway to regulate and adjudicate restrictive practices.

1. Information to people living with disability, families, supporters, service agencies and others about restrictive practices and alternatives
 - Such as developing and curating information resources about rights, support for decision-making, personalised supports, positive behaviour support, restrictive interventions, reducing the need for restrictive practices
2. Service provider identifies need and develops support plan including restrictive practices
 - Provider develops support plan using Office of the Senior Practitioner guidelines
3. Provider support plan for use of a restrictive practice is tested by the provider-appointed expert panel, who identify if there is support for the provider to proceed.
4. If proceeding, the provider enters the data into the Office of the Senior Practitioner database
5. The provider implements the restrictive practice support plan including, reporting incidents relating to restrictive practices and other relevant data as required
6. Office of the Senior Practitioner undertakes investigation based on one or more triggers
 - An investigation may be triggered by person/family/other complainant, support provider request for assistance, own motion based on database and other sources, repeated provider approval of same restrictive practice without progress
7. As a result of investigation, the Office of the Senior Practitioner makes a determination either:
 - Stop, with the provider instructed to redevelop the plan or seek alternatives
 - Not stop, where the restrictive practices continue albeit with further guidance from the Office of the Senior Practitioner



Conclusion

In concluding, the independent analysis of Tasmania’s restrictive practice authorisation pathway identifies aspects of the current authorisation pathway that work well, areas of limitation and opportunities for enhancement, with many stakeholders expressing their desire to see a redesign of the current authorisation pathway.

The Recommendations and model will be considered with other feedback gained through the consultation process currently underway for the Review of the *Disability Services Act 2011*.

Furthermore, the progression of Tasmania’s restrictive practice authorisation pathway will need to be considerate of, and complementary to, related safeguarding activity such as the extent and scope of the role and function of the Disability Commissioner.



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